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**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**JOHN A. CALCAGNO, M.D.,**

**Case No. 3:17-cv-1890**

**Plaintiff,**

**COMPLAINT**

**v.**

**(Employee Retirement Income  
Security Act of 1974, 29 U.S.C. § 1132(a))**

**UNUM LIFE INSURANCE COMPANY  
OF AMERICA,**

**Defendant.**

**I. INTRODUCTION**

1.

This action is brought on behalf of Plaintiff John A. Calcagno, M.D., pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq.*

("ERISA"). Plaintiff seeks to recover from Defendant, Unum Life Insurance Company of America ("Unum"), unpaid long-term disability ("LTD") benefits pursuant to the terms of a group LTD policy ("LTD Policy") issued and insured by Unum to Plaintiff's former medical practice, Calcagno Pediatrics, P.C.. The LTD Policy is subject to ERISA. Plaintiff seeks unpaid LTD benefits, interest on the unpaid benefits, and his costs and attorney fees, pursuant to ERISA § 502(a), 29 U.S.C. §1132(a), as further stated herein.

## **II. JURISDICTION AND VENUE**

2.

Jurisdiction is conferred by ERISA § 502, 29 U.S.C. § 1132(e)(1), (f), and (g), which gives the United States district courts jurisdiction to hear civil actions brought to recover plan benefits due under the terms of an employee welfare benefit plan, as well as other declarative relief and attorney fees and costs, under ERISA.

3.

Venue is proper in this district court pursuant to ERISA § 502(e), 29 U.S.C. § 1132(e)(2), and pursuant to 28 U.S.C. § 1391.

## **III. THE PARTIES**

4.

At all times material, Plaintiff maintained a pediatric medical practice through, and was a partner in, Calcagno Pediatrics, P.C.

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5.

At all times material, Plaintiff was an insured and/or beneficiary under the LTD Policy.

6.

The LTD Policy is an employee welfare benefit plan covered under ERISA, 29 U.S.C. § 1002(1).

7.

At all times material, Calcagno Pediatrics, P.C., was the sponsor of the LTD Policy within the meaning of ERISA, 29 U.S.C. § 1002(16)(B) and the plan administrator of the LTD Policy within the meaning of ERISA, 29 U.S.C. § 1002(16)(A).

8.

At all times material herein, Unum fully insured the LTD Policy and was the claims administrator of Plaintiff's LTD claim, within the meaning of ERISA, 29 U.S.C. § 1002(16)(A).

#### **IV. STATEMENT OF FACTS**

9.

On or about March 1, 2016, Plaintiff became unable to perform his own occupation and specialty as a pediatrician and left his medical practice due to his disability.

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10.

On or about September 21, 2016, Plaintiff submitted to Unum a claim for LTD benefits through the LTD Policy and subsequently submitted ample medical evidence proving he was disabled from his medical practice as a pediatrician.

11.

After initially paying Plaintiff's LTD claim under reservation of rights, Unum denied Plaintiff's LTD claim by letter dated April 28, 2017.

12.

By letter dated August 18, 2017, through counsel, Plaintiff appealed Unum's LTD claim denial and subsequently submitted additional documentation proving his disability and entitlement to approval of his LTD claim.

13.

By letter dated October 26, 2017, Unum denied Plaintiff's appeal.

14.

Plaintiff has completed all steps required prior to the filing of this Complaint under the LTD Policy and ERISA, pursuant to 29 U.S.C. § 1133.

## **V. CLAIMS**

### **FIRST CLAIM -- FOR BENEFITS, ENFORCEMENT OF RIGHTS AND CLARIFICATION OF FUTURE BENEFITS RIGHTS UNDER ERISA § 502(A)(1)(B), 29 U.S.C. § 1132(A)(1)(B)**

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15.

Plaintiff re-alleges paragraphs 1 through 14, above.

16.

ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), authorizes Plaintiff to recover benefits under the terms of the LTD Policy and to enforce his rights under the terms of the LTD Policy.

23.

By denying Plaintiff's LTD claim and by denying Plaintiff LTD benefits under the LTD Policy, Unum has violated and continues to violate ERISA § 502(a)(1)(B), 29 U.S.C. § 1132 (a)(1)(B).

24.

As the result of Unum's denial of LTD benefits due and owing Plaintiff under the terms of the LTD Policy, Plaintiff has been damaged in the gross amount of \$12,500 per month, commencing June 1, 2016.

#### **REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiff prays that he have and recover judgment in his favor and against Unum as follows:

- (1) Ordering Unum to approve Plaintiff's LTD claim effective March 1, 2016, and to issue a monthly LTD benefit to Plaintiff in the gross amount of \$12,500, effective June 1, 2016 and continuing each month through the date of judgment, pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B);

- (2) Declaring that Plaintiff shall remain entitled to receive a monthly LTD benefit from the date of judgment forward so long as he remains disabled and entitled to LTD benefits under the terms of the LTD Policy, pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B);
- (3) Ordering Unum to pay Plaintiff prejudgment interest, pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B);
- (4) Ordering Unum to pay Plaintiff's attorney fees and costs, pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g)(1); and
- (5) Ordering such other relief as this Court deems just and proper.

DATED this 27 day of November, 2017.

s/ Megan E. Glor

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